

ACT 274

H.B. NO. 1025

A Bill for an Act Relating to Alcohol and Aeronautics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Title 15, Hawaii Revised Statutes, is amended by adding a new chapter to be designated Chapter 263A and to read as follows:

**“CHAPTER 263A
ALCOHOL AND AVIATION SAFETY**

§263A-1 Implied consent of operator of aircraft to submit to testing to determine alcoholic content of blood. (a) Any person who operates an aircraft within the State shall be deemed to have given consent to a test approved by the director of health of the person’s breath or blood for the purpose of determining the alcoholic content of the person’s blood. The person shall have the option to take a test of the person’s breath or blood, or both.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating or in actual physical control of an aircraft is under the influence of intoxicating liquor only after (1) a lawful arrest and (2) the officer has informed the person of the sanctions of section 263A-5.

§263A-2 Persons qualified to take blood specimen. No person, other than a physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath specimen.

§263A-3 Additional tests. The person tested may select and allow any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood or have any person administer a test or tests in addition to any administered at the direction of a law enforcement officer. The results of the additional test or tests may be used as provided in section 263A-5. The failure or inability to obtain an additional test by a person shall not preclude the admission of a test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to the person.

§263A-4 Consent of person incapable of refusal not withdrawn. The consent of a person deemed to have given consent pursuant to section 263A-1 shall not be withdrawn by reason of the person’s being dead, unconscious, or in any other state which renders the person incapable of consenting to examination,

and the test may be given. In such event, a test of the person's blood shall be administered.

§263A-5 Revocation of privilege to operate an aircraft upon refusal to submit to testing. (a) If a person under arrest refuses to submit to a breath or blood test, none shall be given except as provided in section 263A-9, but the law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the law enforcement officer had probable cause to believe the arrested person had either been flying or was in actual physical control of an aircraft while under the influence of intoxicating liquor;
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing as provided in section 263A-6, and shall determine whether the statements contained in the affidavit are true. If the district judge finds the statements contained in the affidavit are true, the judge shall prohibit the person from operating an aircraft from a state or private airport for a period of one year.

(c) Whenever a court penalizes a person under this section, it shall also require that the person be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the person's alcohol dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the person to obtain appropriate treatment. All costs for such assessment or treatment or both shall be borne by the penalized person.

(d) The penalties provided by this section are additional penalties and not substitutes for other penalties provided by law.

§263A-6 Hearing before a district judge. A hearing to determine the truth of an affidavit submitted to a district judge shall be held within twenty days after the district judge has received the affidavit.

The district judge shall hear and determine:

- (1) Whether the law enforcement officer had probable cause to believe that the person had either been flying or was in actual physical control of an aircraft while under the influence of intoxicating liquor;
- (2) Whether the person was lawfully arrested;
- (3) Whether the law enforcement officer had informed the person of the sanctions of section 263A-5; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.

§263A-7 Notice to federal aviation administration. When it is determined under this chapter that a nonresident's privilege to operate an aircraft from a state or private airport shall be prohibited, the director of transportation shall so inform the administrator of the Federal Aviation Administration in writing.

§263A-8 Test results to be collected. The results of any test for alcohol content made upon the operator of an aircraft involved in an accident shall be sent to the state director of transportation who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the State and the administrator of the Federal Aviation Administration, but may

be made available to other government agencies as the director of transportation deems necessary and advisable.

§263A-9 Applicable scope of chapter. Nothing in this chapter shall be construed to prevent a law enforcement officer from obtaining a sample of breath or blood as evidence of intoxication from the operator of any aircraft involved in an accident resulting in injury to or death of any person.

§263A-10 Evidence of intoxication. (a) In any criminal prosecution for a violation of section 263-11, four-hundredths per cent or more by weight of alcohol in the defendant's blood within four hours after the time of the alleged violation as shown by chemical analysis of the defendant's blood or breath or other approved analytical technique shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 263-11, the amount of alcohol found in the defendant's blood within four hours after the time of the alleged violation as shown by chemical analysis of the defendant's blood or breath or other approved analytical technique shall be competent evidence of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation, and shall give rise to the following presumptions:

- (1) If there were two-hundredths per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor at the time of the alleged violation.
- (2) If there were in excess of two-hundredths per cent but less than four-hundredths per cent by weight of alcohol in the defendant's blood, that fact may be considered with other competent evidence in determining whether or not the defendant was at the time of the alleged violation under the influence of intoxicating liquor, but shall not of itself give rise to any presumption.

(c) Subsection (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 17, 1991.)